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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 134.

UNITED STATES, *Petitioner*,

v.

LOUIS TOWNSLEY, *Respondent*.

On Writ of Certiorari to the Court of Claims.

BRIEF FOR THE RESPONDENT.

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OPINIONS BELOW.

The opinions of the Court of Claims (R. 14-29) have not yet been officially reported.

JURISDICTION.

The original findings of fact and conclusions of law of the Court of Claims were entered on October 4, 1943 (R. 3). On March 6, 1944, the court overruled the Government's motion for a new trial, vacated its order of October 4, 1943, and entered new findings of fact and conclusions of law (R.

3-14, 29). The petition for a writ of certiorari was filed on June 6, 1944, and was granted on October 9, 1944. The jurisdiction of this Court rests upon the provisions of Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTIONS PRESENTED.

The principal question is whether Section 23 of the Independent Offices Appropriation Act, 1935, in so far as it provides for overtime compensation for services in excess of 40 hours per week, applies to Government employees of the Panama Canal whose compensation is fixed by a wage-fixing authority on a monthly basis. If this question is answered in the affirmative, the further question presented is whether the Court of Claims employed the proper method for computing such overtime compensation.

STATUTE INVOLVED.

Section 23 of the Independent Offices Appropriation Act, 1935, approved March 28, 1934 (c. 102, 48 Stat. 522, 5 U. S. C. 673c), provides:

> "The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one half."

STATEMENT.

No exception is taken to the statement of facts in petitioner's brief (Pages 4-8).

SUMMARY OF ARGUMENT.

Section 23 of the Act of March 28, 1934, is applicable to monthly as well as to hourly and per diem employees. The language of this section applies to both. The legislative history of the section shows no intent to discriminate against monthly employees. Neither is such an intent to be inferred from overtime legislation subsequent to 1934 or from administrative practice before and after the 1934 Act.

The method employed by the Court of Claims in computing respondent's overtime was proper. The method of computing a day's pay set forth in the Act of June 30, 1906, has no application to overtime pay. That Act was concerned not with overtime pay but with fixing a formula for paying compensation for less than a month's services.

ARGUMENT.

I. The Act of March 28, 1934 Applies to Employees of the Panama Canal Whose Compensation is Fixed by a Wage Fixing Authority on a Monthly Basis.

1. The language of Section 23 applies to monthly employees.

Section 23 of the Act of March 28, 1934, provides:

> "Sec. 23. The weekly compensation, minus any general percentage reduction which may be prescribed by act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one half."

According to the language of this section an employee is entitled to the benefits of its provisions if he is engaged in

one of the "several trades and occupations" whose compensation "is set by wage boards or other wage-fixing authorities." The section cannot be limited to hourly or per diem employees without adding a qualification not expressed in the language used. As stated by the court below (R. 20) the language of Section 23, on its face, is just as applicable to monthly employees as to hourly or per diem employees.

Petitioner does not question the fact that respondent's compensation was fixed by a wage board or other wage-fixing authority. It does not seriously urge that respondent was not engaged in a trade or occupation.[1]

It is not altogether clear, however, whether petitioner admits or denies that the language of Section 23 is just as applicable to monthly as to hourly or per diem employees.[2]

First it states that the court below relied upon the broad language of the statute in holding that it applied to monthly employees, and that this construction can only be supported if the language of the Act is read out of the context of its history and purposes. This would appear to be an admission that the language of the Act applies to monthly employees. Petitioner's reference to the "elliptical language" of the Act also indicates strongly that it seeks to add to Section 23 a limitation not expressed in its language.

[1] At pages 19-20 of its brief, petitioner states that while there has been no judicial definition or prior legislative use of the words "trades and occupations", a regulation for navy yard wage boards fixing wage schedules for hourly or per diem employees uses this phrase. Petitioner does not urge, however, that these words thereby become words of art showing on their face an intent to limit Section 23 to hourly or per diem employees. In this connection it is interesting to note that the Comptroller General ruled (14 Comp. Gen. 156, 162) that supervisory employees paid on a monthly basis are engaged in "trades and occupations" within the meaning of Section 23, and that in the court below petitioner admitted that the Comptroller General was reasonable in ruling that a supervisor, as a rule, retains the characteristics of a craftsman more than he attains those of an administrator.

[2] In this connection it should be noted that the Comptroller General has ruled that Section 23 does apply to monthly employees in so far as it provides for a 40-hour week and against reduction in compensation. 14 Comp. Gen. 156.

Later, however, petitioner urges that the phrases "weekly earnings" and "weekly compensation" limit application of the Act to hourly and per diem employees. It is argued that the weekly compensation of such employees can be readily ascertained by adding the number of hours or days worked each week, but that applying the Act to monthly employees involves practical difficulties. Respondent is aware of no doctrine of construction that would nullify the plain meaning of a statute for any such reason. In fact, the courts have not hesitated to give effect to the language of at least two statutes, though it involved determining a method of computation to be used in computing the hourly pay of employees paid by the month or week.

In *Nelson* v. *St. Joseph & G. I. Ry. Co.*, 199 Mo. App. 635, 205 S. W. 870, a railroad employee sued to recover overtime pay under the Act of September 3, 5, 1916 (c. 436, 39 Stat. 721), popularly known as the Adamson Act. That Act provided for a standard eight-hour day for railroad employees; that pending a report by a commission created by the Act, their compensation should not be reduced below the existing standard day's wage; and that for time in excess of eight hours they should be paid at a rate not less than the pro rata rate for the standard eight-hour work day. The defendant contended that the Act should not apply because the contract of employment provided for a monthly rather than a daily wage. The Court, however, rejected this contention after finding that the contract of employment provided plaintiff should work four days out of every five. The Court then ascertained the number of work days in each month by multiplying calendar days by four-fifths, and arrived at the standard day's wage for each month by dividing the monthly compensation by the number of working days during the month.

Attention is also directed to the Act of June 25, 1938 (c. 676, 52 Stat. 1060, 1062, 1063), also known as the Fair Labor Standards Act of 1938. This Act provides that employees shall be paid certain minimum hourly wages, and

that an employee shall not be employed for a workweek longer than a certain number of hours unless he receives overtime compensation at a rate not less than one and one-half times the regular rate at which he is employed. The courts have not hesitated to apply this act to employees paid a weekly or monthly compensation even though this involved the computation of an hourly wage and no method of computation were prescribed in the Act. For example, in *Overnight Motor Transp. Co.* v. *Missel*, 316 U. S. 572, 580, this Court held that for purposes of computing overtime the regular hourly rate of an employee paid by the week should be determined by dividing his weekly compensation by the number of hours he worked each week even though he worked a varying number of hours each week. In *St. John* v. *Brown* (District Court, N. D. Texas) 38 F. Supp. 385, the court computed the hourly rate of an employee paid by the month by multiplying the monthly salary by twelve, dividing the annual compensation by fifty-two, and dividing the weekly compensation by sixty-three since his contract of employment contemplated working nine hours a day seven days a week. See also, *Allen* v. *Moo* (District Court, D. Idaho, N. D.), 39 F. Supp. 5.

It is therefore obvious that the use of the words "weekly compensation" in the Act of 1934 gives rise to no serious difficulty in applying the Act to monthly employees, and cannot be construed to limit the Act to hourly or daily employees. The logical explanation of the use of this phrase is simply that any legislation dealing with maximum hours of work and overtime must provide some definite period of time as a standard. In the Fair Labor Standards Act the standard was hours per week, and in the Adamson Act it was hours per day. In both cases it has been held that the standard should be applied to monthly employees.

The words of Mr. Justice Douglas in *Tennessee Coal Company* v. *Muscoda Local*, 321 U. S. 590, 597-598, seem especially appropriate here:

> "But these provisions, like the other portions of the Fair Labor Standards Act, are remedial and humanitarian in purpose. We are not here dealing with mere chattels or articles of trade but with the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others. Those are the rights that Congress has specially legislated to protect. Such a statute must not be interpreted or applied in a narrow, grudging manner. Accordingly we view §§ 7 (a), 3 (g) and 3 (j) of the Act as necessarily indicative of a Congressional intention to guarantee either regular or overtime compensation for all actual work or employment. To hold that an employer may validly compensate his employees for only a fraction of the time consumed in actual labor would be inconsistent with the very purpose and structure of those sections of the Act. * * * "

Petitioner also contends that because Section 23 states that the weekly compensation, minus any general percentage reduction by Congress, shall be "reestablished", Congress intended to deal with employees whose compensation had actually been reduced by means other than a percentage reduction. Any such construction would, of course, disqualify hourly and per diem employees whose weekly compensation had not been reduced prior to the Act. It is not thought that petitioner would wish to go so far. The Comptroller General has consistently applied Section 23 to hourly and daily employees without inquiring whether their weekly compensation had been reduced prior to the Act. See 13 Comp. Gen. 265; 14 Comp. Gen. 156. These decisions have not been questioned by petitioner. Moreover, petitioner ignores the succeeding words "and maintained", which make it clear that one of the purposes of the Act is to prevent wage-fixing authorities from reducing existing compensation as well as to restore compensation which had already been reduced.

In conclusion, then, it is submitted that the language of Section 23 requires that its benefits be applied to all trades and occupations whose compensation is fixed by wage fixing

authorities, whether the compensation is by the hour, day or month.

2. The legislative history of Section 23 does not indicate it is to be applied only to per diem and hourly employees.

There is no reason to suppose from the legislative history of Section 23 of the Act of March 28, 1934, that it was intended to apply only to hourly and per diem employees.

The 1934 Act was the last of the "Economy Acts". The first, the Act of June 30, 1932 (c. 314, 47 Stat. 382, 389), permitted the reduction of the compensation of federal employees by means of a system of furloughs without pay. The Act of March 20, 1933 (48 Stat. 8, 13), provided for a general percentage reduction up to 15 per cent. The Act of March 20, 1933 did not, as petitioner indicates, abolish the furlough system. On the contrary it only prohibited furloughs in excess of 90 days for employees of the classified service and contained no prohibition or limitation upon the power to furlough employees whose compensation was fixed by wage-fixing authorities. Furthermore, petitioner admits in its brief (footnote 11, page 21) that the so-called independent power to furlough to keep within appropriations or because of failure of work was not affected by the Act of March 20, 1933. H. R. 6663, the bill which, as later amended, became the Act of March 28, 1934, continued a maximum percentage reduction. It did not prohibit furloughs without pay and it did not contain the provision which became Section 23 of the Act.

It was at this point that N. P. Alifas, representative of the Metal Trades Department, American Federation of Labor, submitted to the Senate Committee on Appropriations, the statement which is set out in Appendix A to petitioner's brief.

In this statement Mr. Alifas urged that all pay reductions, including the 15 per cent reduction and the prohibition against automatic and administrative promotions, be

eliminated from the bill, and requested the following amendment:

> "*Provided*, That the rates of compensation for the several trades and occupations, which are set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than the respective wage schedules in effect on June 1, 1932; and that the Navy Department and other departments and independent establishments of the Government are hereby directed to restore to employees any reduction in pay which they have received since June 30, 1932, in addition to the 15 percent Congressional cut, without increasing the present hours of service; and that the respective departments and independent offices are hereby authorized to incur such deficiencies as may be necessary to put this provision into effect."

He lists several evils, past and future, which this amendment is designed to remedy.

First, speaking of navy yard employees only, he states that per diem employees have had their hours reduced to an average of 40 per week by furloughing them without pay every alternate Monday, thus reducing their base pay 22 per cent rather than 15 per cent. This statement is petitioner's principal reason for urging that the Act be applied only to hourly and per diem employees. While Mr. Alifas' statement cited as an example per diem and per hour navy yard employees, respondent does not believe and petitioner has not established that it applied only to such employees. Carried to its logical conclusion petitioner's contention would exclude hourly and per diem employees whose workweek had not been so reduced. We are unable to find that such a position has ever been taken by either the Comptroller General or petitioner.

Second, apparently speaking generally with reference to per diem employees, Mr. Alifas stated that employees had been discharged and reemployed in lower grades. While he is speaking of per diem and hourly employees, it is a situation which no doubt happened also to monthly em-

ployees. There is no reason to suppose that Mr. Alifas wished to discriminate against monthly employees so situated.

Third, Mr. Alifas points out that there is nothing in the bill to prevent wage boards from cutting wage rates in the future. This is just as true of monthly rates as it is of hourly or per diem rates. Here again, while Mr. Alifas is speaking on behalf of per diem employees, there is no reason to suppose that he intended to discriminate against monthly employees. It would be just as reasonable to infer from his representation of per diem employees that his request for the elimination of prohibition against automatic and administrative promotions should apply only to hourly or per diem employees.

For the reasons stated above it is, therefore, submitted that no intent to discriminate against monthly employees can be inferred from Mr. Alifas' statement. In fact the concluding paragraph of his statement shows clearly that he is only attempting to prevent discrimination against per diem employees.

The bill was reported by the Senate Committee on Appropriations without the requested amendment (S. Rep. No. 294, 73d Cong. 2d Sess.). Later, on the floor of the Senate, Senator Thomas offered an amendment which became Section 23 of the Act of March 28, 1934 (78 Cong. Rec. 2977). While he stated that this amendment put employees back on the same status they occupied in July of 1932 and in this connection referred to "hourly pay", it is clear that the Act does much more than this. By requiring 1932 weekly compensation for a 40-hour week it increases the hourly rates. It creates overtime pay for work in excess of 40 hours. It also prevents any reduction in rates by wage-fixing authorities. It is obvious, therefore, that the purpose stated by Senator Thomas was not the only purpose of the amendment. As shown, *supra*, Mr. Alifas stated that one of the purposes of his proposed amendment was to prevent prospective wage cuts by wage boards—a pur-

pose just as applicable to monthly as to hourly employees. There is no reason to suppose that Senator Thomas did not have the same purpose in mind in submitting his amendment. Nor is there any reason to assume that he intended to exclude hourly employees whose hours had not been reduced merely because he stated that the amendment would put employees back on the same status they occupied in 1932. The Act has never been so construed.

Later Congress passed the bill including Section 23. The President then vetoed it primarily because of provisions for veterans benefits, and also because it contained "discriminatory provisions, such as paying employees in some departments of the Government 48 hours' pay for 40 hours' work" (House Doc. 291, 73d Cong. 2d Sess., p. 2). In urging on the floor of the Senate that the bill be passed over the President's veto, Senator Cutting pointed out that the Administration was already trying, under the N. R. A. to pay the same amount of wages for shorter periods of labor (78 Cong. Rec. 5574). From this statement and from the contention that at a much later date the Court of Claims construed the N. I. R. A. as not increasing the compensation of salaried employees, petitioner suggests that Congress did not intend Section 23 of the 1934 Act to apply to salaried employees. We do not feel that even if N. R. A. laws did not apply to salaried "employees" it would furnish any reason for holding that the Act of March 28, 1934 did not apply to monthly employees. However, respondent is unable to find anything that exempts "salaried" employees from N. I. R. A. laws and an examination of the opinion of the Court of Claims in the case of *Steel Products Engineering Co.* v. *United States*, 90 C. Cls. 513, 517, reveals that it was there held that certain "salaried" employees were excluded because it was not proven that their hours or wages in that case had been effected by the N. R. A. laws. In any event this decision was rendered long after the enactment of the Act of March 28, 1934.

It is submitted, therefore, that even if the language of Section 23 were ambiguous, its legislative history does not indicate an intent to limit its application to hourly and per diem employees.

3. Subsequent legislation does not indicate that Section 23 should be limited to hourly and per diem employees.

Petitioner sets out several later statutes as showing that the 1934 Act was intended to apply only to hourly or per diem employees.

The first is the Act of June 26, 1936 (c. 832, 49 Stat. 1969) which amended Section 23 of the 1934 Act to permit the adjustment of regular hours of duty of employees under the Classification Act to the 40-hour week of employees covered by the 1934 Act, and authorized the adjustment of "hourly rates" of compensation of employees under the Classification Act so as to make the aggregate compensation for a 40-hour week equal to the compensation for a full week prior to March 28, 1934. As petitioner points out, the motivating force behind the 1936 Act was the administrative difficulty encountered by the Bureau of Engraving and Printing in coordinating the 40 hour week of employees covered by Section 23 of the 1934 Act with the 44-hour week of hourly employees covered by the Classification Act. Even if it were assumed that the legislative history of the 1936 Act and the use of the words "hourly rates" indicated an intent that the 1936 Act should apply only to hourly employees this would have no effect on monthly employees under the 1934 Act. If anything, the specific reference to "hourly rates" in the 1936 Act and the lack of any such phrase in the 1934 Act, would indicate that the latter was not limited to hourly employees.

Petitioner next refers to the Act of June 28, 1940 (c. 440, 54 Stat. 676, 678) which provided for a workweek of 40 hours for the Navy Department and Coast Guard during the national emergency; for overtime pay at not less than one and one-half times the regular rate for monthly, per

diem hourly and piecework employees whose wages were set by commandants of the navy yards, and for professional, subprofessional and certain other employees of the CAF service as defined by the Classification Act. The Act also contained a proviso that in determining the overtime pay of per annum Government employees the pay for one day should be considered to be 1/360 of their per annum salaries. Since the only employees referred to above who received per annum salaries were those under the Classification Act, the natural assumption would be that another method had already been authorized for monthly, per diem and hourly employees whose wages were set by wage-fixing authorities. While it is true, as pointed out by petitioner, that the committee reports on the bill stated that this was the first time overtime had been "allowed" to monthly and annual employees, and was a "departure from the pratice" theretofore followed, it is equally true that the committees were mistaken on this point. For example, in addition to Section 23 of the 1934 Act, the Act of May 24, 1885 (c. 308, 25 Stat. 157), the Act of February 28, 1925 (c. 368, 43 Stat. 1053, 1059, 1061), and the Act of February 17, 1931 (c. 206, 46 Stat. 1164) authorized the payment of overtime to certain postal employees receiving an annual compensation. Under the 1885 Act this Court awarded overtime to a letter carrier. *United States* v. *Post*, 148 U. S. 124. It would be a dangerous doctrine which permitted the mistaken assumption of committees to control the interpretation of earlier legislation.

Petitioner also refers to the Act of October 21, 1940 (c. 963, 54 Stat. 1205) which provided for overtime pay at one and one-half times the regular rate, to such monthly, per diem, hourly and piece work employees of the field services of the War Department and of the Panama Canal whose wages were set by wage-fixing authorities, and to certain employees under the Classification Act, as should be designated from time to time by the Secretary of War or the Governor of the Panama Canal. It also pro-

vided that in determining overtime pay of per annum employees the pay for one day should be 1/360 of their annual salaries. As in the previous Act, this language indicates that a different method for computing overtime for monthly, hourly and per diem employees whose wages were fixed by wage-fixing authorities had already been authorized. The legislative history cited by petitioner does not contradict this. It shows only that proponents of the bill understood that overtime was already authorized for certain employees in War Department Arsenals and in the Panama Canal, but was not authorized for others. At one point it was stated that the bill would make the pay of annual workers consistent with that of others, but no reference is made to monthly workers. The reference to annual workers would appear to be to those covered by the Classification Act.

The next statute referred to by petitioner is the Act of June 3, 1941 (c. 168, 55 Stat. 241) which authorized payment of overtime compensation to annual employees of the field services of the War Department, the Panama Canal, the Navy Department and the Coast Guard engaged in the same overtime work as employees specified in the Acts of June 28, 1940 and October 21, 1940, *supra*. Introducing the bill which became the Act of June 3, 1941, Senator Reynolds stated that it placed per annum employees on the same basis as laborers and mechanics (87 Cong. Rec. 4275-4276). The natural inference to be drawn is that employees other than annual employees were already entitled to overtime.

The Joint Resolution of December 22, 1942 (c. 798, 56 Stat. 1068) extended overtime compensation to all civilians of the Government with a few exceptions one of which was those whose wages were fixed on a daily or hourly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority. Petitioner contends that this is a recognition that monthly employees whose compensation was fixed by wage boards

were within the class for which overtime legislation was necessary. There are at least two other possible explanations of this Act. Congress may have intended to change the overtime basis for such monthly employees, or it may have been unaware that wage-fixing authorities fixed monthly rates as well as per diem and hourly rates. There is nothing in the Senate Report quoted in petitioner's brief inconsistent with these possibilities.

Lastly, petitioner relies on the Act of May 7, 1943 (c. 93, 57 Stat. 75), which provides for overtime pay for most Government employees including employees whose wages are fixed on a monthly basis by wage-fixing authorities, but excluding hourly or daily employees whose wages are so fixed. Petitioner urges that this shows Congress assumed that overtime pay had already been provided for hourly and per diem employees but not for monthly employees, under Section 23 of the 1934 Act. It can just as well be argued, however, that Congress intended to change the overtime compensation authorized for monthly employees under the 1934 Act to that received by annual workers employed under the Classification Act.

When all the subsequent legislation is considered it fails to reveal that Congress assumed that the 1934 Act did not apply to monthly employees. In fact the contrary is to be inferred. As pointed out, *supra*, the fact that the Act of June 28, 1940, and the Act of October 21, 1940, specified a method for computing overtime for annual employees but did not do so for the monthly, per diem and hourly employees mentioned in those acts strongly suggests that another method had already been authorized for monthly, per diem and hourly employees. Likewise, the fact that the Act of June 3, 1941, *supra*, further extending overtime pay, applied only to annual employees indicates that monthly employees had already been covered. The other Acts have been shown to be inconclusive with respect to indicating Congress' intent regarding the 1934 Act. Petitioner's argument that much of the later legislation becomes mean-

ingless if it is assumed that the 1934 Act applied to monthly employees is just as true with respect to hourly or daily employees, who were given under the Act of June 28, 1940, and the Act of October 21, 1940, exactly what they were entitled to under the 1934 Act. In all the committee reports and congressional debates referred to by petitioner with respect to legislation after 1934, only once is it stated that overtime compensation to monthly employees is a departure from the practice previously followed. Even here it has been shown that the committee reports on the bill which became the Act of June 28, 1940, were incorrect in so far as they made similar statements concerning annual employees. Certainly subsequent legislative history of such an equivocal nature should not be permitted to limit an Act which by its terms and purposes is equally applicable to monthly, per diem and hourly employees.

4. Administrative practice does not require that Section 23 be limited to hourly and per diem employees.

(a) *Practice After Enactment of Section 23.*

In Appendices B, C, and D to its brief, petitioner sets out several interdepartmental letters which, it is urged, establish an administrative interpretation of the 1934 Act limiting that Act to hourly and per diem employees. While respondent is not aware that administrative interpretation can be established by any such hearsay statements, such statements are not sufficient to establish the administrative practice urged by petitioner.

In the first place, the administrative practice to which this Court has looked for aid is the practice of the agencies charged with administration of the statute and not that of the Comptroller General. *Alaska Steamship Co. v. United States*, 290 U. S. 256, 264. As petitioner here concedes, the interpretations upon which it relies were based upon rulings of the Comptroller General. Obviously they do not represent the independent interpretation of the agencies involved.

Moreover, the rulings of the Comptroller General, upon which the agencies relied, take an impossible position. In 14 Comp. Gen. 156 he ruled that Section 23 applied to certain monthly employees of the Panama Canal so far as reduction of pay and hours of work were concerned but did not apply for purposes of overtime compensation. Not even petitioner contends that Section 23 should be so interpreted, but now contends that Section 23 has no application to monthly or annual employees. Obviously the interpretation by the Comptroller General upon which the agencies relied cannot be the basis for inferring that Congress meant to exclude monthly employees.

Petitioner also suggests that the so-called administrative practice to exclude monthly employees under Section 23 was known and ratified by Congress at the time that it passed the Act of July 9, 1937 (c. 470, 50 Stat. 486), which reaffirmed the President's right to fix conditions of employment in the Panama Canal but provided that the Act should not affect the application of Section 23 of the 1934 Act.

The letters from the Governor of the Panama Canal and the Secretary of War which are supposed to have informed Congress of such practice appear in Appendices E and F to petitioner's brief. As stated by the Court below (R. 22), nothing in these letters would suggest to Congress that Section 23 had been interpreted to exclude monthly employees. In fact the opposite is to be inferred from a statement in one of the letters (page 70 of petitioner's brief) that it freezes the "salaries" of the employees to which it applies. There is nothing in these letters or elsewhere to show that Congress knew of any ruling of the Comptroller General prohibiting the payment of overtime to monthly employees. Even if Congress had known of his position it can hardly be urged that it would adopt an interpretation applying the Act to monthly employees for some purposes but not for other purposes.

(b) *Practice before Enactment of Section 23.*

It is not seen what bearing prior acts and administrative practice under such acts have upon the interpretation of the present Act.

Admittedly the Act of March 3, 1883 (c. 128, 22 Stat. 531, 563) and the Act of March 15, 1898 (c. 68, 30 Stat. 277, 316), prohibited the payment of overtime to clerks and other annual employees of the Executive Departments. However, the Act of May 24, 1885, *supra*, the Act of February 28, 1925, *supra*, and the Act of February 17, 1931, *supra*, provided for overtime compensation for certain postal employees paid on an annual basis. As shown *supra*, this Court allowed overtime pay, under the 1885 Act, to an annual employee in the case of *United States* v. *Post*. Overtime compensation had also been provided for other employees paid on an annual basis such as customs inspectors, immigration officials, and meat inspectors. See 19 U. S. C. 267; 8 U. S. C. 109a, 109b; 7 U. S. C. 394. It cannot, therefore, be said that Congress made a radical change when it extended overtime pay to employees whose compensation was fixed on a monthly basis by wage-fixing authorities. Even if this were a radical change respondent is aware of no static principle of statutory construction which would prohibit a change in existing law.

The earlier legislation authorizing wage-fixing in the Navy Department,[3] the Government Printing Office,[4] the Bureau of Engraving and Printing,[5] and the Panama Canal,[6] cannot possibly be construed as requiring payment of overtime to monthly employees and therefore the fact that it may have been the customary practice under such legislation to limit overtime pay to hourly and per diem

[3] See Act of July 14, 1862 (c. 164, 12 Stat. 561, 564); Act of July 16, 1862 (c. 184, 12 Stat. 587); R. S. 1545; Act of March 3, 1909 (c. 255, 35 Stat. 753, 755).

[4] See Act of June 7, 1924 (c. 354, 43 Stat. 658; 44 U. S. C. 40).

[5] See Act of May 15, 1930 (c. 289, 46 Stat. 335, 345); Act of February 23, 1931 (c. 277, 46 Stat. 1217, 1226); Act of July 5, 1932 (c. 430, 47 Stat. 580, 588).

[6] See Act of August 24, 1912 (c. 390, 37 Stat. 560, 561).

employees cannot have any possible bearing on the interpretation of the 1954 Act, which, by its terms, requires payment of overtime to monthly as well as per diem or hourly employees.

Petitioner also urges that there is an equitable basis for distinguishing between monthly employees and hourly or per diem employees in that the former have greater security of tenure, occupy more important posts, receive higher rates of pay, and enjoy more favorable leave provisions. However, the legislation authorizing the fixing of wages does not prevent monthly employees from being laid off any more than in the case of hourly or per diem employees. Nor has it been shown that the former actually enjoyed any greater security of tenure. It should also be noted that in the Panama Canal, at least, there were employees such as electricians whose monthly compensation was computed from hourly rates in the navy yards in the United States. 14 Comp. Gen. 156, 163. It can hardly be said that they received higher rates of pay or occupied more important posts than hourly or per diem employees in the Panama Canal. The difference between leave granted the monthly and hourly employees in the Panama Canal is not substantial.

II. The Method Employed by the Court of Claims in Computing Overtime Compensation is Proper.

The Court of Claims computed overtime by multiplying respondent's monthly compensation by 12, dividing the resulting annual compensation by 52, and dividing the weekly figure by 5 to ascertain the compensation for an eight-hour day. It then multiplied this daily rate by one and one-half for the sixth day worked in each week in order to arrive at the overtime compensation (R. 25-26).

Petitioner contends that this method was incorrect because it was inconsistent with the Act of June 30, 1906, (c. 3914, 34 Stat. 697, 763). This Act provides that in making payments for a fractional part of a month the daily rate

of pay shall be 1/30 of the monthly compensation. Petitioner states that Congress has never authorized deviation from the 360-day basis set forth in the 1906 Act, and that accordingly the same basis should be used in computing respondent's daily compensation.

It is obvious, however, as the language of the 1906 Act shows, that it was intended only as a basis for computing pay for a fractional part of a month, and not for computing overtime. Moreover, in the Act of February 28, 1925 (c. 368, 43 Stat. 1053, 1059), Congress provided for overtime pay for certain annual postal employees, to be calculated upon the basis of daily compensation of 1/306 of their annual compensation. No mention was made of the 1906 Act. As the 1925 Act states, it was based upon 306 working days per year, the 306 figure being computed by subtracting Sundays and legal holidays from 365. This method, of course, is based upon a six-day work week. If the same method is used for the five-day work week, which is required by the 40-hour work week provisions of Section 23 of the 1934 Act, Saturdays as well as Sundays should be subtracted from the number of days in a year. This would give substantially the same daily rate as used by the Court of Claims. In subtracting holidays from the total number of days in a year, the method prescribed by the 1925 Act is more liberal than that employed by the Court of Claims.

It is interesting to note that under the Fair Labor Standards Act of 1938, the court in *St. John* v. *Brown*, *supra*, computed the hourly rate of a monthly employee by multiplying the monthly compensation by 12, dividing the result by 52, and dividing the weekly compensation by the contemplated working hours per week. Up to the last step the methods used by the federal district court and by the Court of Claims are identical. The reason for the different methods employed in the final step is obvious. While the Fair Labor Standards Act of 1938, *supra*, establishes a 40-hour work week, and provides for overtime at one and one-half times the regular rate of compensation, it does not

prevent a reduction of the regular rate of compensation so long as it does not fall below the minimum hourly rate fixed in the Act. Section 23 of the 1934 Act, on the other hand, prohibits a reduction in weekly compensation by reason of a reduction of working hours per week.

The method suggested by petitioner simply fails to comply with the direction of Congress that employees covered by Section 23 shall be paid for a 40-hour week not less than they were paid for a full week on June 1, 1932. In effect, petitioner contends that respondent's regular daily compensation be figured on the basis of a 56-hour work week rather than a 40-hour work week.

For the reasons stated above, it is submitted that the method employed by the Court of Claims in computing respondent's overtime pay was proper.

CONCLUSION.

For the reasons stated in the opinion by the Court below, as well as those hereinabove set out, it is respectfully submitted that the judgment below should be affirmed.

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SUPREME COURT OF THE UNITED STATES.

No. 134.—October Term, 1944.

The United States, Petitioner, vs. Louis Townsley. } On Writ of Certiorari to the Court of Claims.

[January 15, 1945.]

Mr. Justice Roberts delivered the opinion of the Court.

The parties agree that the principal question presented is whether Section 23 of the Independent Offices Appropriation Act, 1935,[1] in so far as it provides for overtime compensation for services in excess of 40 hours per week, applies to Government employes of the Canal Zone whose compensation is fixed on a monthly basis. The Court of Claims answered in the affirmative.[2] If we take the same view, a subsidiary inquiry is whether that court adopted the right method for calculating the overtime compensation.

The section, in full, is:

"The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one half."

Between March 28, 1934, and August 31, 1939, the respondent was employed by the Panama Canal successively as operator, chief operator, and master of a dredge, and was paid on a monthly basis at rates fixed by the Governor of the Canal Zone upon recommendation of a wage board. The respondent's normal work week consisted of six eight-hour days. He retired August 29, 1939, and then, for the first time, asserted that under the Act he was

[1] Act of March 28, 1934, c. 102, 48 Stat. 522; 5 U. S. C. 673 c.

[2] — C. Cls. —, — F. Supp. —.

entitled to compensation at the rate of time and one-half for all hours worked in excess of 40 per week. In prosecution of his claim he instituted this suit March 14, 1940.

The Court of Claims held that he was engaged in one of the "trades and occupations" whose compensation "is set by wage boards or other wage-fixing authorities" covered by the Act. We think this conclusion is right and do not understand the petitioner now to contest it. The court further held that the statute embraced those employes of the Canal Zone whose wages are paid on a monthly basis. This the Government contests, relying on the words of the Act, on administrative practice and on legislative history. A statement of the background of the legislation and its application seems necessary to decision.

In 1923 Congress adopted the "Classification Act"[3] classifying the employment and fixing the compensation for different classes of employes of certain departments of the Government. It excluded from the terms of the Act certain occupations, including apprentices, helpers or journeymen in a recognized trade or craft and skilled or semi-skilled laborers, among others. Admittedly certain employes of the Panama Canal, including the respondent, were not covered by this Act. Their compensation was to be fixed by the President, or by his authority, under the Act of August 24, 1912,[4] specifically it was set by the Governor of the Panama Canal on the advice of a wage board.

The Act of March 28, 1934, with which we are here concerned, was the last of the so-called Economy Acts intended to decrease expenses by reduction of compensation and suspension of privileges of federal employes. By the first such Act, approved June 30, 1932,[5] a regular schedule of reduction of salaries, by a system of furloughs or reduction of the work week, was established.

By the Act of March 20, 1933,[6] Congress superseded the furlough system and provided for a reduction, not to exceed 15%, in the compensation of all employes. By the Act of March 28, 1934, this reduction was cut to 10% for a portion of the fiscal year 1934, and to 5% for the fiscal year 1935. Possible reductions in compensation imposed on federal employes were not, however,

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[3] 42 Stat. 1488 (5 U. S. C. 661, *et seq.*).
[4] c. 390, 37 Stat. 561, 48 U. S. C. 1305.
[5] 47 Stat. 382.
[6] 48 Stat. 8, 13.

limited to those prescribed in the cited statutes. Men were discharged and rehired in lower classifications at the lower wages applicable and were furloughed without pay, in order to keep within appropriations.

When the bill which became the Act of March 28, 1934 was under consideration, a representative of a labor organization appeared before a subcommittee of the Senate Committee on Appropriations and advocated legislation to prohibit certain discriminatory reductions in the wages of per diem Navy Yard workers. He pointed to the continuance of the practice of furloughing them one day in each two weeks, thus reducing the hours worked to 40 per week, and showed that this, in addition to the 15% reduction of pay required by the economy act then in force, actually cut their base pay over 22%. He also complained of other practices which had the effect of reducing their compensation. He expressed the fear that if Congress abolished the 15% level cut, wage boards would at once take action to reduce existing wage scales. He proposed a provision which would prohibit reduction of wages below the wage scales which were in effect June 1, 1932, but suggested no provision concerning hours of work or overtime pay. The draft he submitted was not embodied in the bill as reported.

Senator Thomas offered the present section 23 on the floor of the Senate, stating merely[7] "this amendment is offered to help the employees in the navy yards, the arsenals, the Panama Canal Zone, the Government Printing Office, and the Bureau of Engraving and Printing. It simply proposes to put them back on the same status they occupied in July of 1932. . . . the amendment adopted this afternoon restores their pay cut, it is true, provided that amendment remains in the law. This amendment proposes to give the employees of these several bureaus an increase in their pay even though they do not have to work an increased number of hours. At the present time they work 40 hours and get 44 hours' pay. Under the amendment it is possible that the board that has control of these employees will let them work 40 hours and they will possibly get 48 hours' pay, provided they get an increase of their hourly pay."

The amendment was adopted without further reference to it in either House of Congress. The President vetoed the bill, which

[7] 78 Cong. Rec. 2977.

was passed over his veto. On that occasion a Senator inquired whether certain language in the President's veto message referred to the provisions of Section 23 and the reply was that the Senator interrogated did not know whether this was so. We shall shortly see that the section did substantially more than Senator Thomas stated in his brief explanation.

Prior to the effective date of the Act, the respondent's regular hours of work were 48 per week, though he was often required to work 52. Shortly after § 23 became law, the Governor of the Panama Canal requested the Comptroller General to decide whether the section applied to employes of the Canal and whether it required payment of overtime to certain classes of employes, including the class to which respondent belonged. The Comptroller General ruled that the section was applicable to employes paid by the month as well as to those paid by the hour.[8] He did not directly rule on the right of monthly employes to be paid for overtime but his opinion indicates the view that they were not to be so paid since he stated: ". . . no change in the monthly or annual rate of compensation other than that required to pay a rate not lower than the rate per annum or per month paid June 1, 1932, less any applicable percentage reductions, would be authorized. That is to say, they are to receive the same monthly or annual compensation although their regular hours of duty may be reduced."

Notwithstanding this ruling the Governor attempted to reduce the monthly employes' compensation by putting them on an hourly basis. This he did by dividing the monthly salary paid June 1, 1932, by 224, the number of hours he estimated they worked per month made up of eight hours per day for six days per week, sixteen hours per month for occasional overtime and an allowance for occasional work on Sundays and holidays. This computation showed they had been worked 52 hours per week. Having thus ascertained what he deemed their hourly wages, he added 20% to the hourly wage, so that they would receive the same amount for a forty-hour week as they would theretofore have received for a forty-eight hour week, despite the fact that they had been working and had been paid for more than forty-eight hours according to his computation of their prior hourly earnings. The net result was substantially to reduce their monthly

[8] See 14 Comp. Gen. 158.

earnings. After complaint by the employes, the Governor submitted his action to the Comptroller General and requested reconsideration of the earlier decision.[9] That official reaffirmed his prior decision and disapproved the recomputation of monthly wages which the Governor had adopted. He ruled that the proper procedure was "to continue the payment of the same monthly rates of compensation even though there may have been a reduction in the number of hours per week and no overtime compensation is authorized", and added that "This is the general rule that has been adopted under the 40-hour week statutory provision for all employees paid on a monthly or annual basis." The Governor's submission and the Comptroller General's ruling make it clear that both understood that employes paid on a monthly basis could not be regularly worked more than forty hours a week. Several passages in his decisions also indicate that the Comptroller General was of opinion that monthly employes should not be paid overtime. The rulings were definitely that employes whose weekly wages would be reduced by reducing their work hours must have those wages restored to the 1932 wage level, and that employes who had not had their weekly wages cut because they were paid by the month and were worked 52 hours per week should not have their wages cut as a result of § 23 by the reduction of their work week to 40 hours.

Apparently relying on the Comptroller General's statement that employes on a monthly wage basis were not entitled to overtime, the Governor continued to work the respondent forty-eight hours a week but paid him no overtime. This in spite of his knowledge that the forty hour week limitation was also applicable to the respondent if other parts of § 23 were so applicable. In his second submission to the Comptroller General he stated his understanding of the latter's decision that monthly employes could not be worked more than forty hours a week. There is no evidence that the question of the legality of working the respondent overtime without paying him for it was ever submitted to the Comptroller General.

It seems evident that the Governor's action cannot be justified. If § 23 applied in the case of the respondent, his work week should have been forty hours. If, in spite of § 23, his monthly stipend covered every day and every hour of the month whether service

[9] See 14 Comp. Gen. 165.

was rendered or not, as the Comptroller General had said, so that respondent could not be paid for overtime, then he should not have been regularly worked overtime.

With this outline of the situation, we are brought to a consideration of the Government's contention that § 23 has no application to the respondent's compensation.

We turn first to the suggestion that the expressions "weekly compensation" and "weekly earnings" control all of the provisions of the section and that hence both the affirmative provisions and the prohibition contained in the proviso apply only to those employes who receive weekly wages. As the record, however, fails to indicate that any of the Government employes were paid by the week, it is said that the term "weekly" was used as a method of adjusting the wages of per hour or *per diem* employes because a forty hour work week could easily be calculated in their case as the measure of weekly work and compensation whereas it could not so readily be applied to monthly employes. But we think this suggestion does not comport either with the provisions or the obvious purpose of the legislation. The section commanded not only that wages reduced as a result of furloughs and uncompensated overtime should be reestablished but also that, for the future, such wages should be maintained at the June 1, 1932, level, subject only to the applicable percentage reductions provided by the Economy Acts. It sought to forbid indirect reduction of wages by the provision that a work week should consist of forty hours and that overtime, at one and one-half the regular hourly pay, should be paid for any hours worked beyond that weekly limit. As the test of what should constitute overtime was more conveniently calculated by using a work week, and the hours worked during any week, it was quite natural that Congress should use the phrases "weekly compensation" and "weekly earnings" in setting a floor under wages.[10]

If the Government is right, § 23 had no application to respondent and those in like case and the Governor could have maintained a fifty-two hour work week at the old rate of pay or could have cut the work week with a corresponding reduction in pay. The result would be, as the court below pointed out, that an Act

[10] Compare Overnight Motor Co. *v.* Missel, 316 U. S. 572; Walling *v.* Helmerich & Payne, Inc., 323 U. S. —; St. John *v.* Brown, 38 F. Supp. 385; Allen *v.* Moe, 39 F. Supp. 5; Nelson *v.* St. Joseph & G. I. Ry. Co., 199 Mo. App. 635.

of Congress, on its face applicable to all employes, including monthly employes, which declared that the weekly wages of employes "shall be reestablished and maintained at rates not lower than" the 1932 rate would for the first time have authorized the cutting of the wages of monthly employes below the 1932 level while the wages of all others were being restored to that level. As we have seen, the Comptroller General ruled that such a cut in respondent's pay was "in contravention of the plain terms of the statute."

We are clear that the Comptroller General was right in ruling that the statute applied not only to per diem or hourly employes but also to employes paid on a monthly basis, such as respondent, whose compensation was fixed by a wage board. We are also clear that, on the face of the statute, if the Governor, in the teeth of the statutory provision, worked such employes more than forty hours a week, the overtime provision of § 23 required payment at one and one-half straight time pay for the extra hours worked.

The Government seeks to avoid such a construction of the Act by invoking asserted administrative practice and legislative history. It relies heavily on the statement made to the subcommittee, to which we have heretofore referred. With respect to this statement, we think it enough to say that the spokesman was complaining about discriminations against employes paid by the day or the hour but he nowhere suggests the propriety of distinguishing between such employes and those paid on a monthly basis but worked more than forty hours per week. He advocates setting the June 1, 1932, standard as a minimum subject only to percentage reductions provided by the Economy Act. He envisages the fact that if the work week is reduced to forty hours and the June 1932 standard is thus reestablished, the result will be an increase in wages to the employes concerned. The considerations of equity on which he relies apply quite as much to employes paid by the month as to those paid by the day or hour. Moreover, as above stated, the draft he submitted was not adopted. On the contrary, one differently worded became § 23 of the statute.

The Government next relies on the fact that, prior to the adoption of § 23, no overtime was paid to employes who were on a monthly or annual basis. But, as we shall see, the full application of the principle of a work week limited to specified hours,

and payment of overtime for extra hours, was gradually adopted by the Congress, and the fact that the old practice was abolished piecemeal can have little weight in determining whether, as respects the employes embraced in its terms, § 23 abolished the distinction amongst those embraced in trades and occupations whose compensation was fixed by wage boards. Moreover, the section essayed to deal only with a special class of employes whose working conditions are more nearly comparable to those of men employed in private industry. There may, therefore, have been valid reason for establishing, as respects all of these employes, a different rule from that generally followed in Government departments.

The Government also relies on the prior practice in the Canal Zone, but we think this inconclusive. By the Act of August 24, 1912,[11] the President was empowered to appoint employes of the Canal Zone. The Act provided that "the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same" (§ 4). By Executive Order of February 2, 1914, the President established overtime for per diem and hourly workers but forbade overtime for those paid on a monthly or annual basis. Congress did undoubtedly legislate further on the subject in § 23 of the Act of 1934. The administrative practice prior to the adoption of the section is, therefore, of no moment.

The Governor's attempt to reduce the compensation of the respondent by working him overtime and not paying him for his overtime, in the teeth of the statute and the Comptroller General's ruling, certainly cannot be accorded weight in construing the statute.

The Government produced at the trial of the case in the court below certain letters from the Navy Department, the Government Printing Office, and the Bureau of Engraving and Printing of the Treasury Department stating that they had interpreted § 23 as applying only to *per diem* and hourly employes, and that no overtime had been paid to employes working on a monthly or yearly basis. These letters do not state, however, that these branches regularly worked such employes overtime, as did the Governor of the Canal Zone, without paying for overtime work. Such evidence as there is in the record would seem to indicate the contrary.

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[11] *Supra* Note 4.

The Secretary of the Navy submitted certain questions respecting § 23 to the Comptroller General immediately after the enactment of the section. One was whether per-annum or per-month employes who worked in excess of 40 hours a week "because of an extraordinary emergency" should be paid overtime. The Comptroller answered in the negative referring to his decision rendered the Government Printing Office[12] in which he said that the regular hours of work of employes on an annual basis were required by § 23 to be fixed at not to exceed forty per week. In the same opinion rendered to the Public Printer he had ruled that such employes were not entitled to overtime. There is no evidence that the Secretary of the Navy or the Public Printer conceived that they could work per annum and per month employes more than forty hours a week without extra compensation except in cases of extraordinary emergency or that they ever pursued a practice like that of the Governor of the Panama Canal. It would seem, therefore, that the hours of monthly paid mechanical employes in the departments in question were reduced to 40 without any pay cut. Such action would be in accordance with the rulings of the Comptroller General. Thus the administrative construction of the Governor seems to stand alone and in contradiction to that of other heads of departments and offices of the Government, and, in this respect, worked a discrimination against the respondent and those in his class as contrasted with other employes who stood in the same relation. Certain it is that the Comptroller General never ruled that the standard of 40 hours a week with overtime could be disregarded in practice.

Finally, the Government argues that related legislation indicates Congress did not intend § 23 to apply to employes paid by the month or by the year. We think, however, that, on analysis, the course of legislation, considered as a whole, fails to sustain the contention. As we have said, adoption of the principle of limitation of working time and extra pay for overtime, in respect of Government employment, has been of gradual development.

As early as 1883 Congress authorized the Public Printer to pay extra prices in accordance with the customs of the trade and the justice of the case for extra work ordered in emergencies, performed on Sundays or legal holidays or at night, if performed by

[12] 13 Comp. Gen. 265.

other than regular night forces.[13] It is assumed that the employes embraced in this legislation were paid per diem or per hour. The provision for payment of overtime in the Public Printer's office has been continued in the successive statutes.[14]

In 1888 Congress prescribed an eight hour day with payment for overtime for letter carriers of the United States Postal Service[15], who receive annual salaries.

In 1911 provision was made for overtime pay of employes of the Customs Service required by the nature of their service to work after 5 P.M.[16] Such overtime pay was to be reimbursed the Government by the steamship companies whose business required such services.

In 1919 the Secretary of Agriculture was authorized to pay employes of the Bureau of Animal Industry, employed in industrial establishments in the inspection of meat, for overtime work.[17] Here again the Government was to be reimbursed by the establishment which required the working of overtime, but the compensation paid the inspectors was on an annual salary basis.

In 1940 an Act was passed[18] making the regular working hours of the Navy Department and the Coast Guard, and their field services "eight hours a day or forty hours per week" during the period of the national emergency. The Act set a different method of paying the overtime to monthly, per diem, hourly and piecework employes than that applied to employes paid by the year, but it is to be noted that the forty hour week and the overtime rate of one and one-half times the regular rate was applied to monthly employes.

The Government lays great stress on a report of the Committee on Naval Affairs reporting this legislation to the Senate.[19] In that report the Committee said, referring to the forty hour per week limit, and the payment for overtime: "In this regard, the

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[13] Act of January 13, 1883, 22 Stat. 402.

[14] See 44 U. S. C. 40.

[15] Act of May 24, 1888, 25 Stat. 157; cf. United States v. Post, 148 U. S. 124. See also 39 U. S. C. 117.

[16] Act of Feb. 13, 1911, § 5, 36 Stat. 901. See United States v. Myers, 320 U. S. 561.

[17] Act of July 24, 1919, 41 Stat. 241, 7 U. S. C. 394.

[18] Act of June 28, 1940, 54 Stat. 676, 678. This Act expired June 30, 1942.

[19] S. Rep. No. 1863, 76th Cong., 3d Sess., pp. 11-12.

provision for the payment of compensation [for overtime] to per annum and per month employees is a departure from the practice heretofore followed." . . . A similar statement was made in the House report.[20] The difficulty that arises in giving weight to these statements of the Congressional Committees is that the facts already recited show the reports were wrong in fact and apparently were based upon an inaccurate statement which was credited by the Committees.

In the same year Congress passed another Act on the subject of overtime.[21] In this it was provided:

"notwithstanding the provisions of any other law, compensation for employment in excess of forty hours in any administrative workweek computed at a rate not less than one and one-half times the regular rate is hereby authorized to be paid at such places and to such monthly, per diem, hourly, and piecework employees of the field services of the War Department and the field services of the Panama Canal whose wages are set by wage boards or other wage fixing authorities, . . ."

Such light as we gain from the discussion in Congress indicates that Congress already understood that overtime was payable to certain employes of the Panama Canal by virtue of § 23 of the Act of 1934, but that it was desired to extend the limitation of hours per week and the payment of overtime to employes of the field services of the Army and the field services of the Panama Canal. Thus, in the debate, Mr. Ramspeck, of the House Committee on Civil Service, said:[22]

"The Secretary of War and the Assistant Secretary of War . . . say that they have the legal authority now to pay overtime to certain employes of the War Department in the arsenals and at the Panama Canal, but as to others they have not this authority and this creates a bad administrative situation. They have recommended this bill, which has passed the Senate, and it is my understanding we have given the same authority to the Navy Department as to the Navy yards."

Finally, in 1942, by Joint Resolution, Congress provided for overtime pay for Government employes generally[23] including employes of Government-owned or controlled organizations and those of the District of Columbia whose positions are subject to the

[20] H. Rep. No. 2257, 76th Cong., 3d Sess., pp. 3-4.

[21] Act of October 21, 1940, 54 Stat. 1205. This Act expired June 30, 1942.

[22] 86 Cong. Rec. 13557.

[23] 56 Stat. 1068.

Classification Act of 1923. The resolution embodies a proviso excluding "those whose wages are fixed on a daily or hourly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose, . . .". From this proviso the Government argues that Congress believed that up to that time those whose monthly compensation was fixed by wage boards had not been entitled to overtime and that the resolution granted it to them for the first time. Whatever Congress may have thought or intended in respect of the proviso, we cannot ignore the fact that § 23 of the Act of March 28, 1934, on its face, applied to such monthly employes, that the Comptroller had so ruled, and that, so far as appears, the departments concerned had acted with that understanding, save only the Governor of the Panama Canal who, although so advised, had acted in the teeth of the statute

The same misapprehension with respect to the effect and administration of the Act of 1934 seems to have prevailed when the War Overtime Pay Act of 1943[24] was adopted. That Act, by a sweeping provision, granted overtime pay to all civil employes of the Government and all employes of Government-owned or controlled corporations, except those in the Government Printing Office, and the Tennessee Valley Authority. It specifically included *officers* and employes whose wages are fixed on a monthly or yearly basis by wage boards or similar authorities, and excluded employes whose wages are fixed on a daily or hourly basis by wage boards.

We think this summary of the legislation on the subject is not conclusive or even strongly persuasive as an aid to the construction of the Act under consideration as of the time when Congress adopted it. It seems that there was no very clear and general policy with respect to the payment of overtime until the exigencies of the war called for compensation of Government employes as a class on a basis similar to that adopted in private industry. When the time came to make such general provision, the more or less haphazard dealing with the subject theretofore seems not to have been clearly in mind.

We conclude that the Court of Claims properly held that § 23 applies in respondent's case and that he is entitled to recover for the overtime he was required to work.

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[24] Act of May 7, 1943, 57 Stat. 75, § 1.

We reach then the question whether the court adopted the correct method of calculating the overtime compensation. The respondent submitted a computation whereby he multiplied his monthly salary by twelve and divided the result by fifty-two to ascertain his weekly salary. He divided the weekly salary by five to obtain his daily pay for an eight hour day for each week that he had worked a sixth day. He took the number of weeks in which he had worked a sixth day and multiplied that number by the ascertained daily wage, plus one-half. The Government argued in the court below, and argues in this court, that the monthly wage of the respondent covered every day of the month because the Government hired his full time. As a result, it is said, his daily pay should be one-thirtieth of his monthly pay.[25] In this view, he has been paid straight time not only for the five days, or the forty hours, he should have been worked under § 23 but also for the sixth day he was required to serve. The result is that he should be granted only additional half pay for the sixth day of each week. But, according to this contention, the respondent will already have been overpaid for, according to the argument, he has been paid straight time for the seventh day of each week although he only worked six days and has, therefore, received additional overtime pay for the sixth day. The court below approved the respondent's method of reckoning and we think its decision correct. After the adoption of § 23 the respondent was in effect hired for a work week of forty hours, or a five day week, and his daily wage was to be determined on that basis. He has not been paid for the sixth day of each week and should recover straight time and one-half for the sixth day. This computation accomplishes this, and there is authority for resort to it.[26]

The judgment is

Affirmed.

Mr. Justice MURPHY concurs in the result. The CHIEF JUSTICE, Mr. Justice JACKSON and Mr. Justice RUTLEDGE dissent.

[25] The Government relies on the Act of June 30, 1906, 34 Stat. 763; 5 U. S. C. 84. That statute, however, was not addressed to the problem of a standard work-week of a limited number of hours and the calculation of overtime for hours worked in excess of the limit.

[26] See St. John v. Brown; Allen v. Moe, *supra*, Note 10.